EX PARTE OR LATE FILED

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Cyndie Eby
Executive Director-
Federal Regulatory

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USWEST

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 7, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222, MS-1170
Washington, DC 20554

RE: Docket 93-162

Dear Mr. Caton:

In conjunction with the above-referenced proceeding, I provided additional information to Carol Canteen and Chris Frentrup, Tariff Division, on January 7, 1994 regarding U S WEST Communications' cage construction costs. In accordance with the Commission's ex parte rules, please include a copy of this letter and the attachments in the record in the above-referenced proceeding.

Acknowledgment and date of receipt of this transmittal are requested. A duplicate letter is attached for this purpose.

If you have any questions, please call the undersigned on 429-3106.

Sincerely,

Cyndie Eby /de

Attachments

cc: Ms. Carol Canteen
Mr. Chris Frentrup

No. of Copies rec'd 0+1
List ABCDE

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Cyndie Eby
Executive Director-
Federal Regulatory

January 7, 1994

Mr. Chris Frentrup
Ms. Carol Canteen
Federal Communications Commission
1919 M Street, NW, Room 518, MS-1600C
Washington, DC 20554

RE: U S WEST Communications Direct Case Docket 93-162
(Transmittal Nos. 331, 338, 362, 383, 412, 415 and 423)

Dear Mr. Frentrup and Ms. Canteen:

In our conversation of January 4, 1994 to discuss the cage construction costs in U S WEST Communications' (USWC) Direct Case, you requested additional information relative to the contingency, ADA and consulting percentages. On behalf of USWC, please find examples of contingencies that may arise relative to cage construction and The ADA Answer Book.

If you have any questions, please feel give me a call on 429-3106.

Sincerely,

Cyndie Eby /dc

Attachments

Contingency 20% - This factor is applied to the construction cost estimate to account for those items that require material and/or labor costs that are involved in the construction of the enclosure and cannot be foreseen or identified when a standard design concept is applied. The construction estimate for the enclosure assumes an open room without device barriers.

Architectural examples for construction contingency might include fabrication of the enclosure around obtrusive obstacles that are attached to walls and ceilings such as cable racks and trays, super-structure for adjacent telecommunications equipment, conduits, duct work, light fixtures, fire alarm detectors, fire alarm horns and strobe lights, air distribution transfer grilles, earth quake bracing accouterments, wall mounted fire extinguishers, fire hose cabinets and related piping, electrical distribution panels, fire alarm panels, and equipment alarm panels. All of these existing devices provide fabrication barriers that prolong the amount of fabrication time, could require relocation of the device, or could require additional labor and materials to fabricate around the device.

These obstacles are also barriers when the mechanical and electrical systems need to be installed.

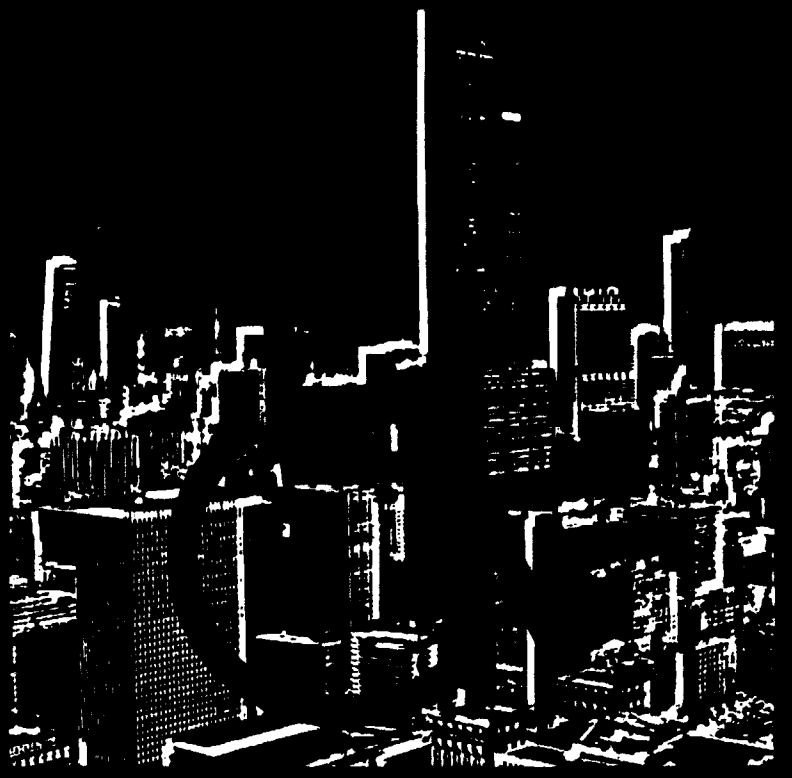
ADA 20% - This factor is applied to the overall construction cost estimate and estimates the additional construction cost requirement to comply with the Americans with Disabilities (ADA). The factor of 20$ is defined in the attached pages taken from the BOMA publication, The ADA Answer Book, Copyright November 1992, page 22 section D.9. This factor represents construction costs that are proportionate "to the costs of altering the primary function area". We anticipate that some ADA requirements could be imposed by local jurisdictions, or be imposed by the specific needs of an interconnector's employee.

Examples of ADA requirements that could be imposed include restroom modifications, early warning fire detection and fire initiation device modification, light switch relocation, barrier removal, providing an accessible building entrance, and providing an accessible route to the primary function area or enclosure. Without the benefit of identifying the cost for specific ADA requirements on an individual case basis we submit that our use of the 20% factor is fare and conforms to industry practice.

Consultant 15% - This factor is applied to the overall construction cost estimate and represents the cost to produce design drawings and specifications in order to bid and construct the interconnector's enclosure. As a corporation we use these services frequently and we traditionally estimate the cost of these services as a percent of the total estimated construction cost. The 15% factor is considered our average consulting fee cost for central office remodel and rearrangement projects.

Local government jurisdictions usually require design drawings and specifications for review before issuing construction permits. The local jurisdictions looks for the respective state seal of the registered professional architect and/or engineer on all construction drawings. We submit that the 15% factor is fare and reasonable for estimating consulting fees for enclosure design services.

THE ADA ANSWER BOOK



Answers to the 146 Most Critical Questions About the Americans with Disabilities Act, Title III

BOMA INTERNATIONAL

BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL

THE ADA ANSWER BOOK

Answers To The 146 Most Critical Questions About The Americans With Disabilities Act, Title III

Published by:
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THE ADA ANSWER BOOK

Answers To The 146 Most Critical Questions About The Americans With Disabilities Act, Title III

I. How This Information Was Developed

Over the past two years, BOMA International has been intent on providing building owners and managers with the most complete, accurate, and usable information available on the Americans with Disabilities Act (ADA). This document is the latest addition to that sustained effort.

The questions presented in this publication are drawn from several sources: from the more than 70 ADA seminars presented by BOMA during 1992; from the myriad of phone calls received at the offices of BOMA International; from meetings held within the real estate industry; and from discussions with groups representing persons with disabilities.

The ***answers*** provided in this publication are also drawn from multiple sources, providing the best and most up-to-date perspective on Title III of the ADA. These sources include: the final Justice Department rules and Access Board technical guidelines (published July 26, 1991); the Title III Technical Assistance Manual published by the Justice Department; numerous meetings held with staff at both the Justice Department and Access Board; and Justice Department "Interpretive Letters" on the ADA obtained through the Freedom of Information Act request filed by BOMA International in September, 1992.

existing facilities more accessible—not for alterations or new construction. Of course, "double-dipping" is not allowed; the deduction and the credit cannot both be used for the same costs.

While commercial facilities are not required to remove barriers, if they elect to do so they should be able to take advantage of these tax incentives as well.

Additional information is available from the IRS by calling 1-800-829-3676. Publication 907 provides information on the tax deduction; Form 8826 is needed to claim the disabled access credit.

The tax structure of your company will determine whether the deduction and credit can be used per building or only once for the entire company. Because these are not totally new sections of the Internal Revenue Code, your accountant should be able to provide guidance.

D. New Construction and Alterations

D.1 If a new building is being built, or an alteration is underway, that "beats" one of the compliance dates, do I still need to be concerned about complying with Title III?

For a new building, if you either made a complete building permit submission before January 26, 1992 *or* receive your first certificate of occupancy before January 26, 1993, the building is exempt from the new construction requirements of Title III. For an alteration project, if the physical work of the alteration began on or before January 26, 1992, then it is exempt from the Title III alteration requirements.

DOJ 36.401 (a)
DOJ 36.402 (a)

Potential Problem

If a project falls into one of these categories but is at a stage where changes could still be made, it would be foolish to ignore Title III. Such projects are exempt only from the requirements for new construction and alterations, not from all of Title III. Therefore, if a new or altered building or facility is a place of public accommodation, once it is occupied there will be an obligation to begin removing barriers. If the project is a commercial facility, it is exempt from barrier removal but any future alterations will have to comply.

DOJ 36.402 (a) Preamble
DOJ Interpretive Letters
DJ 202-PL-00104
DJ 202-PL-00109
DJ 202-PL-00110

TAM III-1.1000

Very Important

Therefore, if a project is "technically" exempt from the new construction or alteration requirements, you should still attempt to comply with ADAAG to the extent feasible, based upon the level of progress of the work.

REFERENCES:

REFERENCES:

D.2 In what situations may I use the "structural impracticability" exception for new construction?

DOJ 36.401 (c)
ADAAG 4.1.1 (5)(a)

ADAAG contains an exception for structural impracticability, but it is limited to "those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features." This does not apply to areas with steep grade differences, but would, for example, apply to a site that requires the building to be elevated on stilts for flood protection. Therefore, unless you are building a duck blind in the middle of a marsh, or perhaps an oceanfront structure, you will probably not qualify for the structural impracticability exception.

DOJ 36.401 (c) Preamble
ADAAG Preamble 4.1.1 (5)(a)
TAM III-5.1000

If a situation appears to meet the criteria for "structurally impracticable," you do not receive a blanket exception for the new building, but only an exception for the areas or items for which full compliance is structurally impracticable. In a marsh or a flood plain, it may be structurally impracticable to provide an accessible route to an accessible entrance, because the building is raised well above grade. However, everything from the front door on would still need to comply with ADAAG. Site conditions will not make it structurally impracticable to provide doors with a 32 inch clear width, accessible restrooms, visible alarms, or any other interior elements. Therefore, a building elevated on stilts must be an accessible building with the possible exception of an accessible route leading to an accessible entrance, and perhaps some site elements.

Very Important

D.3 Are any portions of a building *not* required to be accessible?

Yes. Two types of exceptions are provided in ADAAG, applicable both to alterations and new construction. The first is a general exception for certain spaces, and the second is a limited exception for "employee work areas."

ADAAG 4.1.1(5)(b)

First, accessibility is not required at all for raised observation galleries that are used primarily for security purposes, or for areas such as elevator pits, elevator penthouses, catwalks, or cooling towers, which are used only during repairs and are accessed only by a ladder or other inaccessible means.

TAM III-7.3130
DOJ Interpretive Letter
DJ 181-06-0005

The more typical mechanical rooms in a building, such as a boiler room, electrical equipment room, or telephone closet, which are not accessed by a ladder or similar means, are not totally exempt, but are classified as employee work areas subject to the limited exception discussed below.

ADAAG 4.1.1(3)
DOJ Preamble - Summary of ADAAG
DOJ 36.401(b) Preamble
TAM III-7.3110
ADAAG Preamble 4.1.1(3)

An employee work area is an area used exclusively by employees performing their job functions. It can apply to something as small as a security guard booth or to something as large as the production floor of a factory. Employee work areas are not required to comply with all the ADAAG provisions; the only requirement is that a person with a disability be able to approach, enter, and exit the area.

Look Closely

In order to apply this exception to a portion of a facility, the area must contain only employee work areas. Employee locker rooms, employee restrooms, or employee dining rooms are not employee work areas, so they must fully comply with ADAAG. In an office setting, certain individual offices may be classified as employee work areas, while others will not qualify if customers or clients are invited into them. Depending on the type of facility, an open-plan office space might qualify as an employee work area, except to the extent that copy rooms, meeting areas, or kitchenettes are provided within that space.

REFERENCES:

D.4 What types of changes to a facility are considered "alterations" subject to the requirements of Title III?

DOJ 36.402 (b)
TAM III-6.1000

An alteration is defined as any change that affects the usability of an element or space. Examples include relocating a door, rearranging full height partitions, relocating an electrical outlet, or replacing door handles or light switches. The types of work that are *not* considered alterations—and therefore do not trigger any ADA obligation—are normal maintenance or repair, painting and wallpapering, asbestos removal, installation of a sprinkler system, and changes limited to mechanical, electrical, or HVAC systems.

In certain cases, non-alteration work may trigger some requirements. For example, if replacing a boiler or air conditioning unit requires demolition of a wall and door in order to move the equipment, when the door and wall are replaced they would need to comply with ADAAG.

Look Closely

If modular "systems" furniture is being rearranged, typically no Title III obligation would occur, as only the "built-in" parts of a building are regulated, not all the "things" that are put into the building. However, some types of full-height demountable partitions (especially those containing electrical and telecommunications wiring and controls) are much closer to being alterations. The Justice Department and the Access Board both suggest that a good rule of thumb is that if you are required to get a building permit for the work being done, that work would probably be considered an alteration under Title III.

Hot Tip

D.5 If I alter a single element, does it lead to a requirement to make other elements accessible?

DOJ 36.402 (b)(2) Preamble
ADAAG 4.1.6 (1)(b)
ADAAG Preamble 4.1.6 (1)

Except for alterations affecting primary function areas, the answer is no. The first general rule for alterations is that the altered element must be made accessible. If, for example, you install a light switch where one did not exist, only the light switch need comply; that is it must be mounted within the proper height range. Installation of the light switch does not trigger an obligation for the entire room, or the entire building, to be made accessible. A good way to view the situation is that anywhere you leave "fingerprints" is an area that must comply with ADAAG.

Hot Tip

References:

ADAAG 4.1.6 (1)(c)

D.6 What happens if I alter numerous elements?

When altering numerous elements, your obligation is much less clear than when you alter a single element. Under ADAAG, "if alterations of single elements, when considered together, amount to an alteration of a room or space... the entire space shall be made accessible." In other words, if what you are doing in an area of a building amounts to a "full" alteration of that area, then the entire area must comply, including elements that you may not have planned to alter. For instance, if the alteration work involves relocating some walls and installing some doors in an office suite, once you touch enough walls and doors, everything in the suite will have to be made to comply with Title III. Unfortunately, there is no clear guidance as to what level of work within a space triggers this obligation for "full" compliance. As with many issues in Title III, you will have to make your own decision based on the particular case.

Potential Problem

D.7 What if existing conditions prevent me from being able to fully comply with ADAAG in some area?

DOJ 36.402 (c)
ADAAG 4.1.6 (1)(j)

With some alterations, you may find that it is physically impossible to comply with the technical requirements due to structural or space limitations. Under the ADA, such a situation is regarded as "technically infeasible" and the obligation is to comply to the maximum extent feasible. For instance, if you cannot provide a door opening of at least 32 inches, you must provide a door with the widest opening you can. Every other element in that area that is altered must comply fully, unless it too is technically infeasible. You cannot assume that "Because this door is only 30 inches wide, someone in a wheelchair cannot get beyond it, and so I am not going to worry about wheelchair access from this point on." You do the best you can with a "problem" area, and everything else must comply fully.

TAM III-6.1000
ADAAG Preamble 4.1.6 (1)(j)

In determining whether a given alteration is "technically infeasible," cost cannot be a consideration. For instance, if it is feasible to provide a clear door opening of 32 inches but this would add to the costs of the alteration, you must provide the 32 inch clear opening. Only if a problem is posed by structural elements or space limitations can you deem a situation technically infeasible.

Very Important

D.8 What is meant by "primary function area" and "path of travel"?

DOJ 36.403
TAM III-6.2000

A primary function area is an area where "a major activity for which the facility is intended" is carried out. Examples include the dining room in a restaurant, the offices in an office building, and the production area of a factory. A primary function area can be either a "public" area or an employee work area. A facility may have more than one primary function area.

Look Closely

If a given alteration affects the access to or usability of a primary function area, a requirement is triggered to provide an accessible path of travel to that area. The "path of travel" consists of an accessible route to the altered primary function area and also includes any restrooms, telephones, and drinking fountains serving the altered primary function area. So if a tenant space (which is a primary function area) on the tenth floor of your building is being altered, an accessible path of travel must be provided from the perimeter of the building site, through the front door, and up to the door of that tenant's suite on the tenth floor. Any restrooms, telephones, or drinking fountains serving that tenant space must also be made accessible.

REFERENCES:

DOJ 36.403 Preamble

D.9 Is there a limit on the amount of money that must be spent on providing an accessible path of travel?

Yes. The ADA recognizes that, in many cases (particularly in older buildings), providing an accessible path of travel would cost a great deal. You do not necessarily have to "fix" everything in the path of travel—there is a limit. An accessible path of travel must only be provided to the extent that the costs of doing so are not "disproportionate" to the costs of altering the primary function area.

Very Important

This is the one part in Title III where a "magic number" is given, rather than a list of factors to be considered on a case-by-case basis. The magic number here is *20 percent*, that is, you are only required to spend an amount equal to 20 percent of the initial alteration costs to make the path of travel accessible. Anything greater than 20 percent is considered disproportionate.

DOJ 36.403 (f) Preamble
TAM III-6.2000

When this is the case, the Justice Department offers a list of priorities recommended for allocating resources. The first priority is to provide an accessible entrance into the building or facility. Second is to provide an accessible route to the primary function area. The third priority is accessible restrooms; then telephones, drinking fountains, and finally any remaining areas.

DOJ 36.403 (g)(2)

D.10 Does this mean that any work affecting a primary function area automatically requires me to spend an additional 20 percent?

No. First of all, if barrier removal is occurring rather than an alteration, the path of travel requirement is never triggered.

DOJ 36.304 (d)

Hot Tip

Second, certain "minor" alterations are specifically exempted from the path of travel provisions. Alterations to windows, hardware, controls, electrical outlets, and signage do not trigger the path of travel obligation.

DOJ 36.403 (c)(2)
TAM III-6.2000

Finally, you are never required to exceed the ADAAG requirements for new construction and alterations. If the path of travel already complies with ADAAG, or can be made to comply for less than 20 percent of the alteration costs, there is no obligation to spend the full 20 percent.

References:

D.11 If alterations to windows, hardware, controls, electrical outlets, and signage do not trigger a path of travel obligation, when I undertake an alteration that affects a primary function area, can I subtract the costs of these items before calculating the 20 percent path of travel cost?

No. The intent of this provision is to exempt certain types of small alterations from the path of travel obligation. If you are undertaking an alteration of larger proportions, you may not subtract the costs of these items—they are part of the overall alteration, and the 20 percent calculation should be based on the total alteration cost.

Potential Problem

DOJ 36.403 (h)

You are also not permitted to divide a large alteration into smaller pieces to avoid or minimize the path of travel obligation. If you try to reduce the path of travel obligation by separating the "major" alteration project from the "minor" signage and hardware work, you would be violating this provision of Title III.

D.12 Because painting, wallpapering, and changes to mechanical and electrical systems are not considered alterations (unless they affect usability), can I subtract the costs of these items from a larger alteration prior to calculating my 20 percent path of travel obligation?

DOJ Interpretive Letter
DJ 202-PL-0015

In certain cases, you may be able to subtract the costs of some items before calculating your path of travel obligation. In an interpretive letter, the Justice Department has stated that the costs of replacing electrical and mechanical equipment need not be included where usability is not affected. This interpretation dealt with a rather atypical building—a telecommunications switching facility. A typical alteration in this specialized type of facility would involve work that is 90 percent electrical and mechanical, and only 10 percent architectural. The path of travel cost can be based on the costs of the architectural work only, and not on the total alteration costs, according to the interpretation released by the Justice Department.

Look Closely

This interpretation notwithstanding, you should be careful about subtracting the costs of different "pieces" of an overall alteration in an attempt to reduce your path of travel obligation. For example, you cannot subtract all electrical and mechanical costs, because parts of these systems (such as outlets and switches) affect usability.

ADAAG 4.1.6(1)(i)
TAM III-6.2000

It is clear that if the only work being undertaken involves painting, wallpapering, asbestos removal, or changes to mechanical or electrical systems, you do not trigger any of the alteration provisions, as long as the work does not affect usability. For most typical alterations, it is still unclear when you can subtract some of these costs. If you are involved in a more extensive alteration, be very careful about subtracting

Potential Problem

References:

D.11 If alterations to windows, hardware, controls, electrical outlets, and signage do not trigger a path of travel obligation, when I undertake an alteration that affects a primary function area, can I subtract the costs of these items before calculating the 20 percent path of travel cost?

Potential Problem

No. The intent of this provision is to exempt certain types of small alterations from the path of travel obligation. If you are undertaking an alteration of larger proportions, you may not subtract the costs of these items—they are part of the overall alteration, and the 20 percent calculation should be based on the total alteration cost.

DOJ 36.403 (h)

You are also not permitted to divide a large alteration into smaller pieces to avoid or minimize the path of travel obligation. If you try to reduce the path of travel obligation by separating the "major" alteration project from the "minor" signage and hardware work, you would be violating this provision of Title III.

D.12 Because painting, wallpapering, and changes to mechanical and electrical systems are not considered alterations (unless they affect usability), can I subtract the costs of these items from a larger alteration prior to calculating my 20 percent path of travel obligation?

DOJ Interpretive Letter
DJ 202-PL-0015

Look Closely

In certain cases, you may be able to subtract the costs of some items before calculating your path of travel obligation. In an interpretive letter, the Justice Department has stated that the costs of replacing electrical and mechanical equipment need not be included where usability is not affected. This interpretation dealt with a rather atypical building—a telecommunications switching facility. A typical alteration in this specialized type of facility would involve work that is 90 percent electrical and mechanical, and only 10 percent architectural. The path of travel cost can be based on the costs of the architectural work only, and not on the total alteration costs, according to the interpretation released by the Justice Department.

This interpretation notwithstanding, you should be careful about subtracting the costs of different "pieces" of an overall alteration in an attempt to reduce your path of travel obligation. For example, you cannot subtract all electrical and mechanical costs, because parts of these systems (such as outlets and switches) affect usability.

ADAAG 4.1.6(l)(i)
TAM III-6.2000

Potential Problem

It is clear that if the only work being undertaken involves painting, wallpapering, asbestos removal, or changes to mechanical or electrical systems, you do not trigger any of the alteration provisions, as long as the work does not affect usability. For most typical alterations, it is still unclear when you can subtract some of these costs. If you are involved in a more extensive alteration, be very careful about subtracting